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Travelers Sues Cephalon Over \$17M In Actiq Claims

By Linda Chiem

Law360, New York (July 24, 2012, 8:26 PM EDT) -- Travelers Companies Inc. on Tuesday fired back at Teva Pharmaceutical Industries Ltd. unit Cephalon Inc. in the insurer's fight to recover \$17.5 million in paid workers' compensation claims, accusing the companies of deceptively pedaling off-label uses of a cancer painkiller to boost profits.

In the suit filed in Pennsylvania federal court, Travelers accuses Cephalon of purposely misrepresenting the safety, efficacy and appropriateness of Actiq by promoting it to other doctors and specialists as a general painkiller for injuries such as burns, bone fractures, contusions and concussions. But Actiq, which contains the opioid fentanyl, was approved by the U.S. Food and Drug Administration only to manage pain in certain cancer patients.

"Despite being aware of a legal and regulatory framework that strictly prohibits marketing and promoting drugs for uses other than those that have specifically been found to be safe and efficacious, defendants engaged in a continuing pattern and practice of misleading the medical community and the general public regarding the safety, efficacy and appropriateness of Actiq to treat a myriad of ailments for which Actiq has never been proven to be safe or effective and has never been approved by the FDA," the suit said.

As a result of Cephalon's deceptive sales scheme and violation of consumer protection laws, Travelers had to pay out millions of dollars to cover workers' compensation claims, in which the powerful and highly addictive drug was frequently prescribed and in many cases misused, causing patient harm and death, the suit said.

"But for the defendants' deceptive and improper marketing and sales scheme, the injured workers who received Actiq paid for by Travelers and its customers would have received medically appropriate, less dangerous, and less costly drugs to treat the various conditions associated with their injuries, and Travelers and its customers would have not have incurred additional and unnecessary expenses related thereto," the suit said.

Travelers said it paid for more than 8,400 prescriptions for Actiq by more than 500 noncancer patients, which totaled \$17.5 million between 2007 and 2011, according to the suit.

Travelers' suit is the insurer's rebuttal to the suit filed earlier this month by Cephalon in New York federal court that seeks to block Travelers from recovering payments for the claims.

Cephalon said Travelers cannot collect because it already stopped actively promoting Actiq six years ago and reached a \$400 million settlement with the federal government in 2008 over False Claims Act violations related to its promotion of Actiq.

In its suit, Cephalon is seeking judgment on whether Travelers can privately bring its claims over the alleged off-label uses of a drug. It's also asking the court to determine whether claims are precluded by the statute of limitations or by what it claims is Travelers' inability to show it relied only on Cephalon's information on the safety and efficacy of the drug when much of that information has been in the public since 2008, Cephalon said.

Travelers is represented by Katherine Scanlon and William Hurlock of Seiger Gfeller Laurie LLP.

Counsel information for defendants was not immediately available Tuesday.

The case is The Travelers Indemnity Co. et al. v. Cephalon Inc. et al., case number 2:12-cv-04191, in U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Sindhu Sundar. Editing by Jocelyn Allison and Kat Laskowski.

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